

IN THE DISTRICT COURT OF GUAM
TERRITORY OF GUAM
CRIMINAL MINUTES

FILED
DISTRICT COURT OF GUAM
SEP - 7 2005

SENTENCING

MARY L.M. MORAN
CLERK OF COURT

CASE NO. CR-05-00021

DATE: 09/07/2005

HON. S. JAMES OTERO, Designated Judge, Presiding

Court Reporter: Wanda M. Miles

Hearing Electronically Recorded: 1:42:05 - 2:13:30

Law Clerk: None Present

Courtroom Deputy: Virginia T. Kilgore

CSO: B. Pereda

***** A P P E A R A N C E S *****

DEFT: BRIAN WILLIAM ELM

ATTY : JOHN GORMAN

(X) PRESENT () CUSTODY (X) BOND () P.R.

(X) PRESENT () RETAINED (X) FPD () CJA APPOINTED

U.S. ATTORNEY: ROSS STODDARD

AGENT: JOHN QUINTANILLA, ATF

U.S. PROBATION: MARIA CRUZ

U.S. MARSHAL: W. GRAY

INTERPRETER: _____ () SWORN LANGUAGE: _____
() PREVIOUSLY SWORN

(X) COURT STATES THE APPROPRIATE BASE OFFENSE LEVELS

Base offense level:

Total offense level: 17

Criminal History Category: III

NO OBJECTIONS BY THE GOVERNMENT AND DEFENSE

(X) ATTORNEY FOR DEFENDANT ADDRESSES THE COURT:

Requested the Court to impose the low end of the guideline range and for Defendant to receive six months credit for time served in local custody for the same offense conduct. He further requested the Court to allow the Defendant to self-surrender and that while in prison Defendant receive a 500 hour intensive drug treatment program. -GRANTED

(X) DEFENDANT ADDRESSES THE COURT AND APOLOGIZES

(X) GOVERNMENT ADDRESSES THE COURT AND MAKES ITS RECOMMENDATION:

Adopted the findings of the presentence report.

() LETTER(S) OF RECOMMENDATION RECEIVED BY THE COURT

NOTES/OTHER MATTERS:

The Court adopted the findings and conclusions of the presentence report. The Court adjusted Defendant's sentence to reflect Defendant's imprisonment term in his local case no. CF442-03.

- (X) DEFENDANT COMMITTED TO THE BUREAU OF PRISONS FOR A TERM OF TWENTY-FOUR MONTHS. WHILE IN PRISON, THE DEFENDANT SHALL PARTICIPATE IN THE 500 HOUR DRUG TREATMENT PROGRAM AND ANY VOCATIONAL PROGRAMS APPROVED BY THE BUREAU OF PRISONS. DEFENDANT SHALL SELF-SURRENDER TO THE U.S. MARSHAL SERVICE ON OR BEFORE OCTOBER 19, 2005 AT 12 NOON.
- (X) COURT RECOMMENDATION TO THE BUREAU OF PRISONS AT LOMPOC, CALIFORNIA.
- (X) UPON RELEASE FROM IMPRISONMENT, DEFENDANT IS PLACED ON SUPERVISED RELEASE FOR A TERM OF THREE YEARS.

THE TERM OF SUPERVISED RELEASE WILL INCLUDE THE FOLLOWING CONDITIONS:

1. DEFENDANT SHALL NOT COMMIT ANOTHER FEDERAL, STATE, OR LOCAL CRIME.
2. DEFENDANT SHALL NOT UNLAWFULLY POSSESS A CONTROLLED SUBSTANCE AND SHALL REFRAIN FROM ANY UNLAWFUL USE OF A CONTROLLED SUBSTANCE. HE SHALL SUBMIT TO ONE DRUG TEST WITHIN 15 DAYS OF RELEASE FROM IMPRISONMENT AND TO AT LEAST TWO PERIODIC DRUG TESTS THEREAFTER FOR USE OF A CONTROLLED SUBSTANCE.
3. DEFENDANT SHALL SUBMIT TO THE COLLECTION OF A DNA SAMPLE AT THE DIRECTION OF THE U.S. PROBATION OFFICE.
4. DEFENDANT SHALL COMPLY WITH THE STANDARD CONDITIONS OF SUPERVISED RELEASE AS SET FORTH BY THE U.S. SENTENCING COMMISSION.
5. DEFENDANT SHALL BE PROHIBITED FROM POSSESSING A FIREARM OR OTHER DANGEROUS WEAPON.
6. DEFENDANT SHALL REFRAIN FROM THE USE OF ALL ALCOHOLIC BEVERAGES.
7. DEFENDANT SHALL PARTICIPATE IN A PROGRAM APPROVED BY THE PROBATION OFFICE FOR SUBSTANCE ABUSE, WHICH PROGRAM MAY INCLUDE TESTING TO DETERMINE WHETHER THE DEFENDANT HAS REVERTED TO THE USE OF DRUGS OR ALCOHOL. THE DEFENDANT SHALL ALSO MAKE CO-PAYMENT FOR THE PROGRAM AT A RATE TO BE DETERMINED BY THE U.S. PROBATION OFFICE.
8. DEFENDANT SHALL PERFORM 200 HOURS OF COMMUNITY SERVICE UNDER THE DIRECTION OF THE PROBATION OFFICE.

IT IS FURTHER ORDERED THAT THE DEFENDANT PAY TO THE UNITED STATES A SPECIAL ASSESSMENT FEE OF \$100.00 TO BE PAID IMMEDIATELY AFTER SENTENCING.

PURSUANT TO SECTION 5E1.2(f) OF THE GUIDELINE RANGE, ALL FINES ARE WAIVED SINCE IT HAS BEEN DETERMINED THAT THE DEFENDANT DOES NOT HAVE THE ABILITY TO PAY.

COURT STATES THE JUSTIFICATION OF SENTENCE IMPOSED. DEFENDANT ADVISED OF HIS APPEAL RIGHTS.